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RECORDATION NO. \_\_\_\_\_ FILED 1985

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INTERSTATE COMMERCE COMMISSION

CS&M Ref. 2046-166

AGREEMENT AND ASSIGNMENT

Dated as of December 15, 1985

Between

AVONDALE INDUSTRIES INC.  
(ORTNER FREIGHT CAR DIVISION),

as Builder,

and

MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY,

as Agent.

AGREEMENT AND ASSIGNMENT dated as of December 15, 1985, between AVONDALE INDUSTRIES, INC. (ORTNER FREIGHT CAR DIVISION) (the "Builder") and MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY, acting as Agent under a Participation Agreement dated as of the date hereof ("Participation Agreement"), said Agent, as so acting, together with its successors and assigns being hereinafter called the "Assignee".

The Builder and CHEMICAL BUSINESS CREDIT CORP. ("Owner") have entered into a Conditional Sale Agreement dated as of the date hereof ("CSA") covering the sale and delivery, on the conditions therein set forth, by the Builder and the purchase by the Owner of the railroad equipment described in Annex B to the CSA ("Equipment").

The Owner and GEORGIA POWER COMPANY ("Lessee"), have entered into a Lease of Railroad Equipment dated as of the date hereof ("Lease") providing for the lease to the Lessee of the Equipment.

NOW, THEREFORE, THIS AGREEMENT AND ASSIGNMENT ("Assignment") WITNESSETH: that in consideration of good and valuable consideration paid by the Assignee to the Builder, the receipt of which is hereby acknowledged, as well as of the mutual covenants herein contained, the parties hereto agree as follows:

SECTION 1. The Builder hereby assigns, transfers and sets over unto the Assignee:

(a) all the right, title and interest of such Builder in and to each unit of the Equipment when and as severally delivered to and accepted by the Owner, subject to payment by the Assignee to the Builder of the amounts required to be paid pursuant to Section 4 hereof and to payment by the Owner to the Builder of the amounts required to be paid pursuant to Section 4.3(a) of the CSA;

(b) all the right, title and interest of the Builder in and to the CSA (except the right to deliver the Equipment, the right to receive the payments specified in subparagraph (a) of § 4.3 thereof, reimbursement for taxes paid or incurred by the Builder and

any indemnities in favor of the Builder under the CSA), and except as aforesaid in and to any and all amounts which may be or become due or owing to the Builder under the CSA on account of the indebtedness in respect of the Purchase Price (as defined in the CSA) of the Equipment and interest thereon, and in and to any other sums becoming due from the Owner under the CSA, other than those hereinabove excluded; and

(c) except as limited by subparagraph (b) of this paragraph, all the rights, titles, powers, privileges and remedies of the Builder under the CSA;

without any recourse hereunder, however, against the Builder for or on account of the failure of the Owner to make any of the payments provided for in, or otherwise to comply with, any of the provisions of the CSA; provided, however, that this Assignment shall not subject the Assignee to, or transfer, or pass, or in any way affect or modify, the obligations of the Builder to deliver the Equipment in accordance with the CSA or with respect to its warranties and agreements referred to in Article 14 of the CSA or relieve the Owner from its obligations to the Builder contained in Articles 2, 3, 4, 6 and 14 of the CSA, it being understood and agreed that, notwithstanding this Agreement, or any subsequent assignment pursuant to the provisions of Article 15 of the CSA, all obligations of the Builder to the Owner with respect to the Equipment shall be and remain enforceable by the Owner, its successors and assigns, against and only against the Builder. In furtherance of the foregoing assignment and transfer, the Builder hereby authorizes and empowers the Assignee in the Assignee's own name, or in the name of the nominee of the Assignee, or in the name of and as attorney, hereby irrevocably constituted, for the Builder, to ask, demand, sue for, collect, receive and enforce any and all sums to which the Assignee is or may become entitled under this Assignment and compliance by the Owner with the terms and agreements on its part to be performed under the CSA, but at the expense and liability and for the sole benefit of the Assignee.

SECTION 2. The Builder agrees that the Equipment to be sold by it shall be constructed in full accordance with the CSA and it will deliver the same upon completion to the Owner in accordance with the provisions of the CSA; and that, notwithstanding this Assignment, it will perform and fully comply with each of and all the covenants and conditions of the CSA set forth to be performed and complied with by the Builder. The Builder further agrees that it

will warrant to the Assignee and the Owner that at the time of delivery of each unit of the Equipment under the CSA it had legal title to such unit and good and lawful right to sell such unit and that such unit was free of all claims, liens, security interests and other encumbrances of any nature except only the rights of the Owner under the CSA and the rights of the Lessee under the Lease; and the Builder further agrees that it will defend the title to such unit against the demands of all persons whomsoever, except to the extent not warranted above, based on claims originating prior to the delivery of such unit by the Builder under the CSA; all subject, however, to the provisions of the CSA and the rights of the Owner thereunder. The Builder will not deliver any of the Equipment to the Owner under the CSA until the CSA and the Lease have been filed and recorded in accordance with 49 U.S.C. § 11303 with the Interstate Commerce Commission (the Builder and its counsel being entitled to rely on advice from special counsel for the Assignee that such filing and recordation have occurred).

SECTION 3. The Builder agrees with the Assignee that in any suit, proceeding or action brought by the Assignee under the CSA for any installment of, or interest or premium, if any, on, indebtedness in respect of the Purchase Price of the Equipment or to enforce any provision of the CSA, the Builder will indemnify, protect and hold harmless the Assignee from and against all expenses, loss or damage suffered by reason of any defense, setoff, counterclaim or recoupment whatsoever claimed by the Owner arising out of a breach by the Builder of any obligation with respect to the Equipment or the manufacture, construction, delivery or warranty thereof, or by reason of any defense, setoff, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Owner by the Builder (in which latter case the Builder will be subrogated to any claim of the Assignee against the Owner or Lessee, as the case may be, with respect to the matter indemnified against). The obligation of the Builder so to indemnify, protect and hold harmless the Assignee is conditional upon (a) prompt notification by the Assignee to the Builder of any such asserted defense, setoff, counterclaim or recoupment of which the Assignee has knowledge, (b) timely motion or other appropriate action by the Assignee, on the basis of Article 15 of the CSA, to strike any defense, setoff, counterclaim or recoupment asserted by the Owner in any such suit, proceeding or action and (c) if the court or other body having jurisdiction in such suit, proceeding or action denies such motion or other action and accepts such defense,

setoff, counterclaim or recoupment as a triable issue in such suit, proceeding or action, prompt notification by the Assignee to the Builder thereof and giving by the Assignee to the Builder the right, at its expense, to compromise, settle or defend against such defense, setoff, counterclaim or recoupment.

Except in cases of articles or materials specified by the Owner or the Lessee and not manufactured by the Builder and in cases of designs, systems, processes, formulae or combinations specified by the Lessee and not developed or purported to be developed by the Builder, the Builder agrees, except as otherwise specifically provided in Annex A to the CSA, to indemnify, protect and hold harmless the Assignee from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Assignee or its assigns because of the use in or about the construction or operation of any of the Equipment manufactured by the Builder of any design, system, process, formula, combination, article or material which infringes or is claimed to infringe on any patent or other right. The Assignee will give prompt notice to the Builder of any claim actually known to the Assignee which is based upon any such alleged infringement and will give the Builder the right, at the expense of the Builder, to compromise, settle or defend against such claim. The Builder agrees that any amounts payable to it by the Owner or the Lessee with respect to the Equipment, whether pursuant to the CSA or otherwise, not hereby assigned to the Assignee, shall not be secured by any lien, charge or security interest upon the Equipment or any unit thereof.

SECTION 4. The Assignee, on each Closing Date fixed as provided in Article 4 of the CSA with respect to a Group (as referred to in said Article 4) of the Equipment, shall pay to the Builder an amount equal to the portion of the Purchase Price thereof which, under the terms of said Article 4, is payable in installments, provided that there shall have been delivered to the Assignee on or prior to such Closing Date, the following documents, in form and substance satisfactory to the Assignee and its special counsel, and to the Owner and its special counsel, in such number of counterparts as may be reasonably requested by said special counsel:

(a) a bill or bills of sale from the Builder of the Units of Equipment being settled for to the Assignee transferring to the Assignee the security

interest of the Builder in such units, warranting to the Assignee and to the Owner that, at the time of delivery of such units under the CSA, the Builder had legal title to such units and good and lawful right to sell such units and such units were free of all claims, liens, security interests and other encumbrances of any nature except only the rights of the Owner under the CSA and the rights of the Lessee under the Lease, and covenanting to defend the title to such units against demands of all persons whomsoever, to the extent of such warranty, based on claims originating prior to the delivery of such units by the Builder under the CSA;

(b) a Certificate or Certificates of Acceptance with respect to the units of the Equipment in such Group as contemplated by Article 3 of the CSA and § 2 of the Lease;

(c) an invoice of the Builder for the units of the Equipment in such Group accompanied by or having endorsed thereon a certification by the Owner as to its approval thereof;

(d) an opinion of counsel for the Builder, dated as of such Closing Date, addressed to the Assignee and the Owner, to the effect that the bill or bills of sale described in subsection (a) hereof have been duly authorized, executed and delivered by the Builder and, assuming that the CSA and this Assignment have been duly filed and recorded with the Interstate Commerce Commission pursuant to 49 U.S.C. § 11303, are valid and effective to convey good and lawful title to the units of the Equipment in such Group to the Owner and to vest in the Assignee the security interest of the Builder in the units of the Equipment in such Group, free from all claims, liens, security interests and other encumbrances (other than those created by the CSA and the rights of the Lessee under the Lease) arising from, through or under the Builder; and

(e) a receipt from the Builder for any payment (other than the payment being made by the Assignee pursuant to the first paragraph of this Section 4) required to be made on such Closing Date to the Builder with respect to the Equipment, unless such payment is made by the Assignee with funds furnished to it for that purpose by the Owner.

The obligation of the Assignee hereunder to make payment for any of the Equipment assigned hereunder is hereby expressly conditioned upon the Assignee having on deposit or available upon the liquidation of investments, pursuant to the terms of the Participation Agreement, sufficient funds available to make such payment and upon payment by the Owner of the amount required to be paid by it pursuant to § 4.3(a) of Article 4 of the CSA. In the event that the Assignee shall not make any such payment, the Assignee shall reassign to the Builder, without recourse to the Assignee, all right, title and interest of the Assignee in and to the units of the Equipment with respect to which payment has not been made by the Assignee.

SECTION 5. The Assignee may assign all or any of its rights under the CSA, including the right to receive any payments due or to become due to it from the Owner thereunder. In the event of any such assignment, any such subsequent or successive assignee or assignees shall, to the extent of such assignment, and upon giving the written notice required in Article 15 of the CSA, enjoy all the rights and privileges and be subject to all the obligations of the Assignee hereunder.

SECTION 6. The Builder hereby:

(a) represents and warrants to the Assignee, the Owner and their successors and assigns, that the CSA and this Assignment were duly authorized by it and lawfully executed and delivered by it for a valid consideration, and that, assuming due authorization, execution and delivery by the Owner and the Assignee, the CSA and this Assignment are, insofar as the Builder is concerned, legal, valid and existing agreements binding upon the Builder in accordance with their terms and that they are now in force without amendment thereto;

(b) agrees that, subsequent to the payment in full of the Purchase Price, at the request of the Assignee or its successors or assigns, it will make, execute and deliver all such further instruments of assignment, transfer and assurance and do all such further acts and things as may be necessary and appropriate in the premises to give effect to the provisions hereinabove set forth and more perfectly to confirm the rights, titles and interests hereby assigned and transferred to the Assignee or intended so to be; and

(c) agrees that, upon request of the Assignee, its successors or assigns, it will execute any and all instruments which may be necessary or proper in order to discharge of record the CSA or any other instrument evidencing any interest of the Builder therein or in the Equipment.

SECTION 7. The terms of this Assignment and all rights and obligations hereunder shall be governed by the laws of the State of New York; provided, however, that the parties shall be entitled to all the rights conferred by 49 U.S.C. § 11303, such additional rights arising out of the filing, recording or depositing of the CSA and this Assignment as shall be conferred by the laws of the several jurisdictions in which the CSA or this Assignment shall be filed, recorded or deposited, or in which any unit of the Equipment shall be located, and any rights arising out of the marking on the units of Equipment.

SECTION 8. The Builder understands and agrees that the Owner is relying upon the representations and warranties made by the Builder herein and upon the documents to be delivered hereunder by the Builder.

SECTION 9. This Assignment may be executed in any number of counterparts, but the counterpart delivered to the Assignee shall be deemed to be the original counterpart. Although for convenience this Assignment is dated as of the date first above written, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

IN WITNESS WHEREOF, the parties hereto, each pursuant to due corporate authority, have caused this instrument to be executed in their respective corporate names by duly authorized officials, and their respective corporate seals to be hereunto affixed and duly attested, all as of the date first above written.

AVONDALE INDUSTRIES, INC.  
(ORTNER FREIGHT CAR DIVISION),

by Edward J. Joyce, Jr.  
Vice President

[Corporate Seal]

Attest:

Edward J. Joyce, Jr.  
Assistant Secretary

MERCANTILE-SAFE DEPOSIT AND  
TRUST COMPANY, as Agent,

by

Vice President

[Corporate Seal]

Attest:

Corporate Trust Officer

STATE OF NEW YORK, )  
 ) ss.:  
COUNTY OF NEW YORK,)

On this 27 day of December 1985, before me personally appeared Edward J. Joyce, Jr. to me personally known, who being by me duly sworn, says that he is a Vice President of AVONDALE INDUSTRIES, INC. (ORTNER FREIGHT CAR DIVISION) that one of the seals affixed to the foregoing instrument is the corporate seal of said Corporation, that said instrument was signed and sealed on behalf of said Corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.

Sharon A. Zeller  
Notary Public

[Notarial Seal]

My Commission expires

SHARON A. ZELLER  
Notary Public State of New York  
No. 30-4792828  
Qualified in Nassau County  
Certificate filed in New York County  
Commission Expires March 30, 1987

STATE OF MARYLAND, )  
 ) ss.:  
CITY OF BALTIMORE,)

On this            day of December, 1985 before me personally appeared           , to me personally known, who being by me duly sworn, says that he is a Vice President of MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY, that one of the seals affixed to the foregoing instrument is the seal of said bank, that said instrument was signed and sealed on behalf of said bank by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said bank.

\_\_\_\_\_  
Notary Public

[Notarial Seal]

My Commission expires

ACKNOWLEDGMENT OF NOTICE OF ASSIGNMENT

Receipt of a copy of, and due notice of the assignment made by, the foregoing Agreement and Assignment is hereby acknowledged as of December 15, 1985.

CHEMICAL BUSINESS CREDIT  
CORP.,

by

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Attorney-in-Fact

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CS&M Ref. 2046-166

AGREEMENT AND ASSIGNMENT

Dated as of December 15, 1985

Between

AVONDALE INDUSTRIES INC.  
(ORTNER FREIGHT CAR DIVISION),

as Builder,

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MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY,

as Agent.

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AGREEMENT AND ASSIGNMENT dated as of December 15, 1985, between AVONDALE INDUSTRIES, INC. (ORTNER FREIGHT CAR DIVISION) (the "Builder") and MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY, acting as Agent under a Participation Agreement dated as of the date hereof ("Participation Agreement"), said Agent, as so acting, together with its successors and assigns being hereinafter called the "Assignee".

The Builder and CHEMICAL BUSINESS CREDIT CORP. ("Owner") have entered into a Conditional Sale Agreement dated as of the date hereof ("CSA") covering the sale and delivery, on the conditions therein set forth, by the Builder and the purchase by the Owner of the railroad equipment described in Annex B to the CSA ("Equipment").

The Owner and GEORGIA POWER COMPANY ("Lessee"), have entered into a Lease of Railroad Equipment dated as of the date hereof ("Lease") providing for the lease to the Lessee of the Equipment.

NOW, THEREFORE, THIS AGREEMENT AND ASSIGNMENT ("Assignment") WITNESSETH: that in consideration of good and valuable consideration paid by the Assignee to the Builder, the receipt of which is hereby acknowledged, as well as of the mutual covenants herein contained, the parties hereto agree as follows:

SECTION 1. The Builder hereby assigns, transfers and sets over unto the Assignee:

(a) all the right, title and interest of such Builder in and to each unit of the Equipment when and as severally delivered to and accepted by the Owner, subject to payment by the Assignee to the Builder of the amounts required to be paid pursuant to Section 4 hereof and to payment by the Owner to the Builder of the amounts required to be paid pursuant to Section 4.3(a) of the CSA;

(b) all the right, title and interest of the Builder in and to the CSA (except the right to deliver the Equipment, the right to receive the payments specified in subparagraph (a) of § 4.3 thereof, reimbursement for taxes paid or incurred by the Builder and

any indemnities in favor of the Builder under the CSA), and except as aforesaid in and to any and all amounts which may be or become due or owing to the Builder under the CSA on account of the indebtedness in respect of the Purchase Price (as defined in the CSA) of the Equipment and interest thereon, and in and to any other sums becoming due from the Owner under the CSA, other than those hereinabove excluded; and

(c) except as limited by subparagraph (b) of this paragraph, all the rights, titles, powers, privileges and remedies of the Builder under the CSA;

without any recourse hereunder, however, against the Builder for or on account of the failure of the Owner to make any of the payments provided for in, or otherwise to comply with, any of the provisions of the CSA; provided, however, that this Assignment shall not subject the Assignee to, or transfer, or pass, or in any way affect or modify, the obligations of the Builder to deliver the Equipment in accordance with the CSA or with respect to its warranties and agreements referred to in Article 14 of the CSA or relieve the Owner from its obligations to the Builder contained in Articles 2, 3, 4, 6 and 14 of the CSA, it being understood and agreed that, notwithstanding this Agreement, or any subsequent assignment pursuant to the provisions of Article 15 of the CSA, all obligations of the Builder to the Owner with respect to the Equipment shall be and remain enforceable by the Owner, its successors and assigns, against and only against the Builder. In furtherance of the foregoing assignment and transfer, the Builder hereby authorizes and empowers the Assignee in the Assignee's own name, or in the name of the nominee of the Assignee, or in the name of and as attorney, hereby irrevocably constituted, for the Builder, to ask, demand, sue for, collect, receive and enforce any and all sums to which the Assignee is or may become entitled under this Assignment and compliance by the Owner with the terms and agreements on its part to be performed under the CSA, but at the expense and liability and for the sole benefit of the Assignee.

SECTION 2. The Builder agrees that the Equipment to be sold by it shall be constructed in full accordance with the CSA and it will deliver the same upon completion to the Owner in accordance with the provisions of the CSA; and that, notwithstanding this Assignment, it will perform and fully comply with each of and all the covenants and conditions of the CSA set forth to be performed and complied with by the Builder. The Builder further agrees that it

will warrant to the Assignee and the Owner that at the time of delivery of each unit of the Equipment under the CSA it had legal title to such unit and good and lawful right to sell such unit and that such unit was free of all claims, liens, security interests and other encumbrances of any nature except only the rights of the Owner under the CSA and the rights of the Lessee under the Lease; and the Builder further agrees that it will defend the title to such unit against the demands of all persons whomsoever, except to the extent not warranted above, based on claims originating prior to the delivery of such unit by the Builder under the CSA; all subject, however, to the provisions of the CSA and the rights of the Owner thereunder. The Builder will not deliver any of the Equipment to the Owner under the CSA until the CSA and the Lease have been filed and recorded in accordance with 49 U.S.C. § 11303 with the Interstate Commerce Commission (the Builder and its counsel being entitled to rely on advice from special counsel for the Assignee that such filing and recordation have occurred).

SECTION 3. The Builder agrees with the Assignee that in any suit, proceeding or action brought by the Assignee under the CSA for any installment of, or interest or premium, if any, on, indebtedness in respect of the Purchase Price of the Equipment or to enforce any provision of the CSA, the Builder will indemnify, protect and hold harmless the Assignee from and against all expenses, loss or damage suffered by reason of any defense, setoff, counterclaim or recoupment whatsoever claimed by the Owner arising out of a breach by the Builder of any obligation with respect to the Equipment or the manufacture, construction, delivery or warranty thereof, or by reason of any defense, setoff, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Owner by the Builder (in which latter case the Builder will be subrogated to any claim of the Assignee against the Owner or Lessee, as the case may be, with respect to the matter indemnified against). The obligation of the Builder so to indemnify, protect and hold harmless the Assignee is conditional upon (a) prompt notification by the Assignee to the Builder of any such asserted defense, setoff, counterclaim or recoupment of which the Assignee has knowledge, (b) timely motion or other appropriate action by the Assignee, on the basis of Article 15 of the CSA, to strike any defense, setoff, counterclaim or recoupment asserted by the Owner in any such suit, proceeding or action and (c) if the court or other body having jurisdiction in such suit, proceeding or action denies such motion or other action and accepts such defense,

setoff, counterclaim or recoupment as a triable issue in such suit, proceeding or action, prompt notification by the Assignee to the Builder thereof and giving by the Assignee to the Builder the right, at its expense, to compromise, settle or defend against such defense, setoff, counterclaim or recoupment.

Except in cases of articles or materials specified by the Owner or the Lessee and not manufactured by the Builder and in cases of designs, systems, processes, formulae or combinations specified by the Lessee and not developed or purported to be developed by the Builder, the Builder agrees, except as otherwise specifically provided in Annex A to the CSA, to indemnify, protect and hold harmless the Assignee from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Assignee or its assigns because of the use in or about the construction or operation of any of the Equipment manufactured by the Builder of any design, system, process, formula, combination, article or material which infringes or is claimed to infringe on any patent or other right. The Assignee will give prompt notice to the Builder of any claim actually known to the Assignee which is based upon any such alleged infringement and will give the Builder the right, at the expense of the Builder, to compromise, settle or defend against such claim. The Builder agrees that any amounts payable to it by the Owner or the Lessee with respect to the Equipment, whether pursuant to the CSA or otherwise, not hereby assigned to the Assignee, shall not be secured by any lien, charge or security interest upon the Equipment or any unit thereof.

SECTION 4. The Assignee, on each Closing Date fixed as provided in Article 4 of the CSA with respect to a Group (as referred to in said Article 4) of the Equipment, shall pay to the Builder an amount equal to the portion of the Purchase Price thereof which, under the terms of said Article 4, is payable in installments, provided that there shall have been delivered to the Assignee on or prior to such Closing Date, the following documents, in form and substance satisfactory to the Assignee and its special counsel, and to the Owner and its special counsel, in such number of counterparts as may be reasonably requested by said special counsel:

(a) a bill or bills of sale from the Builder of the Units of Equipment being settled for to the Assignee transferring to the Assignee the security

interest of the Builder in such units, warranting to the Assignee and to the Owner that, at the time of delivery of such units under the CSA, the Builder had legal title to such units and good and lawful right to sell such units and such units were free of all claims, liens, security interests and other encumbrances of any nature except only the rights of the Owner under the CSA and the rights of the Lessee under the Lease, and covenanting to defend the title to such units against demands of all persons whomsoever, to the extent of such warranty, based on claims originating prior to the delivery of such units by the Builder under the CSA;

(b) a Certificate or Certificates of Acceptance with respect to the units of the Equipment in such Group as contemplated by Article 3 of the CSA and § 2 of the Lease;

(c) an invoice of the Builder for the units of the Equipment in such Group accompanied by or having endorsed thereon a certification by the Owner as to its approval thereof;

(d) an opinion of counsel for the Builder, dated as of such Closing Date, addressed to the Assignee and the Owner, to the effect that the bill or bills of sale described in subsection (a) hereof have been duly authorized, executed and delivered by the Builder and, assuming that the CSA and this Assignment have been duly filed and recorded with the Interstate Commerce Commission pursuant to 49 U.S.C. § 11303, are valid and effective to convey good and lawful title to the units of the Equipment in such Group to the Owner and to vest in the Assignee the security interest of the Builder in the units of the Equipment in such Group, free from all claims, liens, security interests and other encumbrances (other than those created by the CSA and the rights of the Lessee under the Lease) arising from, through or under the Builder; and

(e) a receipt from the Builder for any payment (other than the payment being made by the Assignee pursuant to the first paragraph of this Section 4) required to be made on such Closing Date to the Builder with respect to the Equipment, unless such payment is made by the Assignee with funds furnished to it for that purpose by the Owner.

The obligation of the Assignee hereunder to make payment for any of the Equipment assigned hereunder is hereby expressly conditioned upon the Assignee having on deposit or available upon the liquidation of investments, pursuant to the terms of the Participation Agreement, sufficient funds available to make such payment and upon payment by the Owner of the amount required to be paid by it pursuant to § 4.3(a) of Article 4 of the CSA. In the event that the Assignee shall not make any such payment, the Assignee shall reassign to the Builder, without recourse to the Assignee, all right, title and interest of the Assignee in and to the units of the Equipment with respect to which payment has not been made by the Assignee.

SECTION 5. The Assignee may assign all or any of its rights under the CSA, including the right to receive any payments due or to become due to it from the Owner thereunder. In the event of any such assignment, any such subsequent or successive assignee or assignees shall, to the extent of such assignment, and upon giving the written notice required in Article 15 of the CSA, enjoy all the rights and privileges and be subject to all the obligations of the Assignee hereunder.

SECTION 6. The Builder hereby:

(a) represents and warrants to the Assignee, the Owner and their successors and assigns, that the CSA and this Assignment were duly authorized by it and lawfully executed and delivered by it for a valid consideration, and that, assuming due authorization, execution and delivery by the Owner and the Assignee, the CSA and this Assignment are, insofar as the Builder is concerned, legal, valid and existing agreements binding upon the Builder in accordance with their terms and that they are now in force without amendment thereto;

(b) agrees that, subsequent to the payment in full of the Purchase Price, at the request of the Assignee or its successors or assigns, it will make, execute and deliver all such further instruments of assignment, transfer and assurance and do all such further acts and things as may be necessary and appropriate in the premises to give effect to the provisions hereinabove set forth and more perfectly to confirm the rights, titles and interests hereby assigned and transferred to the Assignee or intended so to be; and

(c) agrees that, upon request of the Assignee, its successors or assigns, it will execute any and all instruments which may be necessary or proper in order to discharge of record the CSA or any other instrument evidencing any interest of the Builder therein or in the Equipment.

SECTION 7. The terms of this Assignment and all rights and obligations hereunder shall be governed by the laws of the State of New York; provided, however, that the parties shall be entitled to all the rights conferred by 49 U.S.C. § 11303, such additional rights arising out of the filing, recording or depositing of the CSA and this Assignment as shall be conferred by the laws of the several jurisdictions in which the CSA or this Assignment shall be filed, recorded or deposited, or in which any unit of the Equipment shall be located, and any rights arising out of the marking on the units of Equipment.

SECTION 8. The Builder understands and agrees that the Owner is relying upon the representations and warranties made by the Builder herein and upon the documents to be delivered hereunder by the Builder.

SECTION 9. This Assignment may be executed in any number of counterparts, but the counterpart delivered to the Assignee shall be deemed to be the original counterpart. Although for convenience this Assignment is dated as of the date first above written, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

IN WITNESS WHEREOF, the parties hereto, each pursuant to due corporate authority, have caused this instrument to be executed in their respective corporate names by duly authorized officials, and their respective corporate seals to be hereunto affixed and duly attested, all as of the date first above written.

AVONDALE INDUSTRIES, INC.  
(ORTNER FREIGHT CAR DIVISION),

by

\_\_\_\_\_  
Vice President

[Corporate Seal]


Attest:

\_\_\_\_\_  
Assistant Secretary



MERCANTILE-SAFE DEPOSIT AND  
TRUST COMPANY, as Agent,

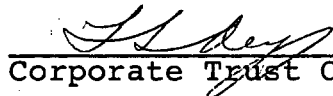
by

  
\_\_\_\_\_

Vice President

[Corporate Seal]

Attest:

  
\_\_\_\_\_

Corporate Trust Officer

STATE OF NEW YORK, )  
 ) ss.:  
COUNTY OF NEW YORK,)

On this            day of December 1985, before me personally appeared            to me personally known, who being by me duly sworn, says that he is a Vice President of AVONDALE INDUSTRIES, INC. (ORTNER FREIGHT CAR DIVISION) that one of the seals affixed to the foregoing instrument is the corporate seal of said Corporation, that said instrument was signed and sealed on behalf of said Corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.

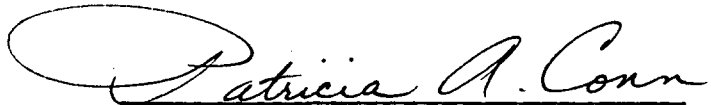
\_\_\_\_\_  
Notary Public

[Notarial Seal]

My Commission expires

STATE OF MARYLAND, )  
 ) ss.:  
CITY OF BALTIMORE,)

On this *27<sup>th</sup>* day of December, 1985 before me personally appeared *THOMAS A. SUMMERLIN*, to me personally known, who being by me duly sworn, says that he is a Vice President of MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY, that one of the seals affixed to the foregoing instrument is the seal of said bank, that said instrument was signed and sealed on behalf of said bank by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said bank.

  
Notary Public

[Notarial Seal]

My Commission expires *7-1-86*

ACKNOWLEDGMENT OF NOTICE OF ASSIGNMENT

Receipt of a copy of, and due notice of the assignment made by, the foregoing Agreement and Assignment is hereby acknowledged as of December 15, 1985.

CHEMICAL BUSINESS CREDIT  
CORP.,

by

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Attorney-in-Fact

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CS&M Ref. 2046-166

AGREEMENT AND ASSIGNMENT

Dated as of December 15, 1985

Between

AVONDALE INDUSTRIES INC.  
(ORTNER FREIGHT CAR DIVISION),

as Builder,

and

MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY,

as Agent.

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AGREEMENT AND ASSIGNMENT dated as of December 15, 1985, between AVONDALE INDUSTRIES, INC. (ORTNER FREIGHT CAR DIVISION) (the "Builder") and MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY, acting as Agent under a Participation Agreement dated as of the date hereof ("Participation Agreement"), said Agent, as so acting, together with its successors and assigns being hereinafter called the "Assignee".

The Builder and CHEMICAL BUSINESS CREDIT CORP. ("Owner") have entered into a Conditional Sale Agreement dated as of the date hereof ("CSA") covering the sale and delivery, on the conditions therein set forth, by the Builder and the purchase by the Owner of the railroad equipment described in Annex B to the CSA ("Equipment").

The Owner and GEORGIA POWER COMPANY ("Lessee"), have entered into a Lease of Railroad Equipment dated as of the date hereof ("Lease") providing for the lease to the Lessee of the Equipment.

NOW, THEREFORE, THIS AGREEMENT AND ASSIGNMENT ("Assignment") WITNESSETH: that in consideration of good and valuable consideration paid by the Assignee to the Builder, the receipt of which is hereby acknowledged, as well as of the mutual covenants herein contained, the parties hereto agree as follows:

SECTION 1. The Builder hereby assigns, transfers and sets over unto the Assignee:

(a) all the right, title and interest of such Builder in and to each unit of the Equipment when and as severally delivered to and accepted by the Owner, subject to payment by the Assignee to the Builder of the amounts required to be paid pursuant to Section 4 hereof and to payment by the Owner to the Builder of the amounts required to be paid pursuant to Section 4.3(a) of the CSA;

(b) all the right, title and interest of the Builder in and to the CSA (except the right to deliver the Equipment, the right to receive the payments specified in subparagraph (a) of § 4.3 thereof, reimbursement for taxes paid or incurred by the Builder and

any indemnities in favor of the Builder under the CSA), and except as aforesaid in and to any and all amounts which may be or become due or owing to the Builder under the CSA on account of the indebtedness in respect of the Purchase Price (as defined in the CSA) of the Equipment and interest thereon, and in and to any other sums becoming due from the Owner under the CSA, other than those hereinabove excluded; and

(c) except as limited by subparagraph (b) of this paragraph, all the rights, titles, powers, privileges and remedies of the Builder under the CSA;

without any recourse hereunder, however, against the Builder for or on account of the failure of the Owner to make any of the payments provided for in, or otherwise to comply with, any of the provisions of the CSA; provided, however, that this Assignment shall not subject the Assignee to, or transfer, or pass, or in any way affect or modify, the obligations of the Builder to deliver the Equipment in accordance with the CSA or with respect to its warranties and agreements referred to in Article 14 of the CSA or relieve the Owner from its obligations to the Builder contained in Articles 2, 3, 4, 6 and 14 of the CSA, it being understood and agreed that, notwithstanding this Agreement, or any subsequent assignment pursuant to the provisions of Article 15 of the CSA, all obligations of the Builder to the Owner with respect to the Equipment shall be and remain enforceable by the Owner, its successors and assigns, against and only against the Builder. In furtherance of the foregoing assignment and transfer, the Builder hereby authorizes and empowers the Assignee in the Assignee's own name, or in the name of the nominee of the Assignee, or in the name of and as attorney, hereby irrevocably constituted, for the Builder, to ask, demand, sue for, collect, receive and enforce any and all sums to which the Assignee is or may become entitled under this Assignment and compliance by the Owner with the terms and agreements on its part to be performed under the CSA, but at the expense and liability and for the sole benefit of the Assignee.

SECTION 2. The Builder agrees that the Equipment to be sold by it shall be constructed in full accordance with the CSA and it will deliver the same upon completion to the Owner in accordance with the provisions of the CSA; and that, notwithstanding this Assignment, it will perform and fully comply with each of and all the covenants and conditions of the CSA set forth to be performed and complied with by the Builder. The Builder further agrees that it

will warrant to the Assignee and the Owner that at the time of delivery of each unit of the Equipment under the CSA it had legal title to such unit and good and lawful right to sell such unit and that such unit was free of all claims, liens, security interests and other encumbrances of any nature except only the rights of the Owner under the CSA and the rights of the Lessee under the Lease; and the Builder further agrees that it will defend the title to such unit against the demands of all persons whomsoever, except to the extent not warranted above, based on claims originating prior to the delivery of such unit by the Builder under the CSA; all subject, however, to the provisions of the CSA and the rights of the Owner thereunder. The Builder will not deliver any of the Equipment to the Owner under the CSA until the CSA and the Lease have been filed and recorded in accordance with 49 U.S.C. § 11303 with the Interstate Commerce Commission (the Builder and its counsel being entitled to rely on advice from special counsel for the Assignee that such filing and recordation have occurred).

SECTION 3. The Builder agrees with the Assignee that in any suit, proceeding or action brought by the Assignee under the CSA for any installment of, or interest or premium, if any, on, indebtedness in respect of the Purchase Price of the Equipment or to enforce any provision of the CSA, the Builder will indemnify, protect and hold harmless the Assignee from and against all expenses, loss or damage suffered by reason of any defense, setoff, counterclaim or recoupment whatsoever claimed by the Owner arising out of a breach by the Builder of any obligation with respect to the Equipment or the manufacture, construction, delivery or warranty thereof, or by reason of any defense, setoff, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Owner by the Builder (in which latter case the Builder will be subrogated to any claim of the Assignee against the Owner or Lessee, as the case may be, with respect to the matter indemnified against). The obligation of the Builder so to indemnify, protect and hold harmless the Assignee is conditional upon (a) prompt notification by the Assignee to the Builder of any such asserted defense, setoff, counterclaim or recoupment of which the Assignee has knowledge, (b) timely motion or other appropriate action by the Assignee, on the basis of Article 15 of the CSA, to strike any defense, setoff, counterclaim or recoupment asserted by the Owner in any such suit, proceeding or action and (c) if the court or other body having jurisdiction in such suit, proceeding or action denies such motion or other action and accepts such defense,

setoff, counterclaim or recoupment as a triable issue in such suit, proceeding or action, prompt notification by the Assignee to the Builder thereof and giving by the Assignee to the Builder the right, at its expense, to compromise, settle or defend against such defense, setoff, counterclaim or recoupment.

Except in cases of articles or materials specified by the Owner or the Lessee and not manufactured by the Builder and in cases of designs, systems, processes, formulae or combinations specified by the Lessee and not developed or purported to be developed by the Builder, the Builder agrees, except as otherwise specifically provided in Annex A to the CSA, to indemnify, protect and hold harmless the Assignee from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Assignee or its assigns because of the use in or about the construction or operation of any of the Equipment manufactured by the Builder of any design, system, process, formula, combination, article or material which infringes or is claimed to infringe on any patent or other right. The Assignee will give prompt notice to the Builder of any claim actually known to the Assignee which is based upon any such alleged infringement and will give the Builder the right, at the expense of the Builder, to compromise, settle or defend against such claim. The Builder agrees that any amounts payable to it by the Owner or the Lessee with respect to the Equipment, whether pursuant to the CSA or otherwise, not hereby assigned to the Assignee, shall not be secured by any lien, charge or security interest upon the Equipment or any unit thereof.

SECTION 4. The Assignee, on each Closing Date fixed as provided in Article 4 of the CSA with respect to a Group (as referred to in said Article 4) of the Equipment, shall pay to the Builder an amount equal to the portion of the Purchase Price thereof which, under the terms of said Article 4, is payable in installments, provided that there shall have been delivered to the Assignee on or prior to such Closing Date, the following documents, in form and substance satisfactory to the Assignee and its special counsel, and to the Owner and its special counsel, in such number of counterparts as may be reasonably requested by said special counsel:

(a) a bill or bills of sale from the Builder of the Units of Equipment being settled for to the Assignee transferring to the Assignee the security

interest of the Builder in such units, warranting to the Assignee and to the Owner that, at the time of delivery of such units under the CSA, the Builder had legal title to such units and good and lawful right to sell such units and such units were free of all claims, liens, security interests and other encumbrances of any nature except only the rights of the Owner under the CSA and the rights of the Lessee under the Lease, and covenanting to defend the title to such units against demands of all persons whomsoever, to the extent of such warranty, based on claims originating prior to the delivery of such units by the Builder under the CSA;

(b) a Certificate or Certificates of Acceptance with respect to the units of the Equipment in such Group as contemplated by Article 3 of the CSA and § 2 of the Lease;

(c) an invoice of the Builder for the units of the Equipment in such Group accompanied by or having endorsed thereon a certification by the Owner as to its approval thereof;

(d) an opinion of counsel for the Builder, dated as of such Closing Date, addressed to the Assignee and the Owner, to the effect that the bill or bills of sale described in subsection (a) hereof have been duly authorized, executed and delivered by the Builder and, assuming that the CSA and this Assignment have been duly filed and recorded with the Interstate Commerce Commission pursuant to 49 U.S.C. § 11303, are valid and effective to convey good and lawful title to the units of the Equipment in such Group to the Owner and to vest in the Assignee the security interest of the Builder in the units of the Equipment in such Group, free from all claims, liens, security interests and other encumbrances (other than those created by the CSA and the rights of the Lessee under the Lease) arising from, through or under the Builder; and

(e) a receipt from the Builder for any payment (other than the payment being made by the Assignee pursuant to the first paragraph of this Section 4) required to be made on such Closing Date to the Builder with respect to the Equipment, unless such payment is made by the Assignee with funds furnished to it for that purpose by the Owner.

The obligation of the Assignee hereunder to make payment for any of the Equipment assigned hereunder is hereby expressly conditioned upon the Assignee having on deposit or available upon the liquidation of investments, pursuant to the terms of the Participation Agreement, sufficient funds available to make such payment and upon payment by the Owner of the amount required to be paid by it pursuant to § 4.3(a) of Article 4 of the CSA. In the event that the Assignee shall not make any such payment, the Assignee shall reassign to the Builder, without recourse to the Assignee, all right, title and interest of the Assignee in and to the units of the Equipment with respect to which payment has not been made by the Assignee.

SECTION 5. The Assignee may assign all or any of its rights under the CSA, including the right to receive any payments due or to become due to it from the Owner thereunder. In the event of any such assignment, any such subsequent or successive assignee or assignees shall, to the extent of such assignment, and upon giving the written notice required in Article 15 of the CSA, enjoy all the rights and privileges and be subject to all the obligations of the Assignee hereunder.

SECTION 6. The Builder hereby:

(a) represents and warrants to the Assignee, the Owner and their successors and assigns, that the CSA and this Assignment were duly authorized by it and lawfully executed and delivered by it for a valid consideration, and that, assuming due authorization, execution and delivery by the Owner and the Assignee, the CSA and this Assignment are, insofar as the Builder is concerned, legal, valid and existing agreements binding upon the Builder in accordance with their terms and that they are now in force without amendment thereto;

(b) agrees that, subsequent to the payment in full of the Purchase Price, at the request of the Assignee or its successors or assigns, it will make, execute and deliver all such further instruments of assignment, transfer and assurance and do all such further acts and things as may be necessary and appropriate in the premises to give effect to the provisions hereinabove set forth and more perfectly to confirm the rights, titles and interests hereby assigned and transferred to the Assignee or intended so to be; and

(c) agrees that, upon request of the Assignee, its successors or assigns, it will execute any and all instruments which may be necessary or proper in order to discharge of record the CSA or any other instrument evidencing any interest of the Builder therein or in the Equipment.

SECTION 7. The terms of this Assignment and all rights and obligations hereunder shall be governed by the laws of the State of New York; provided, however, that the parties shall be entitled to all the rights conferred by 49 U.S.C. § 11303, such additional rights arising out of the filing, recording or depositing of the CSA and this Assignment as shall be conferred by the laws of the several jurisdictions in which the CSA or this Assignment shall be filed, recorded or deposited, or in which any unit of the Equipment shall be located, and any rights arising out of the marking on the units of Equipment.

SECTION 8. The Builder understands and agrees that the Owner is relying upon the representations and warranties made by the Builder herein and upon the documents to be delivered hereunder by the Builder.

SECTION 9. This Assignment may be executed in any number of counterparts, but the counterpart delivered to the Assignee shall be deemed to be the original counterpart. Although for convenience this Assignment is dated as of the date first above written, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

IN WITNESS WHEREOF, the parties hereto, each pursuant to due corporate authority, have caused this instrument to be executed in their respective corporate names by duly authorized officials, and their respective corporate seals to be hereunto affixed and duly attested, all as of the date first above written.

AVONDALE INDUSTRIES, INC.  
(ORTNER FREIGHT CAR DIVISION),

by

\_\_\_\_\_  
Vice President

[Corporate Seal]

Attest:

\_\_\_\_\_  
Assistant Secretary

MERCANTILE-SAFE DEPOSIT AND  
TRUST COMPANY, as Agent,

by

Vice President

[Corporate Seal]

Attest:

Corporate Trust Officer

STATE OF NEW YORK, )  
 ) ss.:  
COUNTY OF NEW YORK,)

On this            day of December 1985, before me personally appeared            to me personally known, who being by me duly sworn, says that he is a Vice President of AVONDALE INDUSTRIES, INC. (ORTNER FREIGHT CAR DIVISION) that one of the seals affixed to the foregoing instrument is the corporate seal of said Corporation, that said instrument was signed and sealed on behalf of said Corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.

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Notary Public

[Notarial Seal]

My Commission expires

STATE OF MARYLAND,) ) ss.:  
CITY OF BALTIMORE,)

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Notary Public

[Notarial Seal]

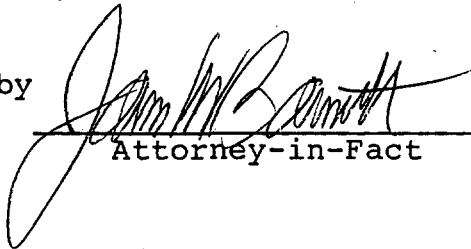
My Commission expires

ACKNOWLEDGMENT OF NOTICE OF ASSIGNMENT

Receipt of a copy of, and due notice of the assignment made by, the foregoing Agreement and Assignment is hereby acknowledged as of December 15, 1985.

CHEMICAL BUSINESS CREDIT  
CORP.,

by

  
\_\_\_\_\_  
Attorney-in-Fact